

REMARKS

Applicants respectfully requests reconsideration of the above referenced patent application in view of the remarks set forth herein, and respectfully request that the Examiner withdraw all rejections. No claims have been amended. No claims have been canceled. No claims have been added. Thus, claims 1-3, 6-15, 18-27 and 30-36 are pending.

35 U.S.C. §102 Rejections

The Office Action rejects claims 1, 6-7, 9-10, 13, 18-19, 21-22, 25, 30-31, 33 and 34 under 35 U.S.C. §102(e) as being anticipated by Brendel, US Patent Number 6,772,333 B1 (*Brendel*). The Office Action further rejects claims 2-3, 14-15, 26 and 27 under 35 U.S.C. §103(a) as being upatentable over *Brendel* in view of Tal et al., US Patent Number 6,625,612 B1 (*Tal*). Applicants present herein arguments to traverse these rejections. Applicants further present arguments as to the improper finality of the latest Office Action, and request that the finality be rescinded.

35 U.S.C. §102(e) Rejection over *Brendel*

The Office Action rejects claims 1, 6-7, 9-10, 13, 18-19, 21-22, 25, 30-31, 33 and 34 under 35 U.S.C. §102(e) as being anticipated by Brendel, US Patent Number 6,772,333 B1 (*Brendel*). Specifically, *Brendel* is alleged in the Office Action to imply, *inter alia*, that the client request is encapsulated and forwarded to the assigned server by the load balancer. Applicants have made no changes to the claim language, and submit that the remarks herein contain no new matter or any

other reason for a new search. For at least the following reasons, Applicants respectfully traverse the above rejection and respectfully request that the finality of the Office Action be withdrawn.

M.P.E.P. §2131 states (emphasis added):

"A claim is anticipated **only** if each and every element as set forth in the claim is found, **either expressly or inherently described**, in a single prior art reference." (quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987))

MPEP §2131 goes on to explain (emphasis added):

"The **identical invention** must be shown in **as complete detail** as is contained in the ... claim" (quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)).

Therefore, the Office Action **must** support a 35 U.S.C. §102 rejection with a single reference which either **expressly or inherently** contains **each and every** limitation set forth in the rejected claims, showing the **identical invention in as complete detail** as contained in the rejected claims. Applicants respectfully note that, under M.P.E.P. §2131, it is **insufficient** to present a reference under 35 U.S.C. §102 which is alleged to **merely imply** limitations of the rejected claims.

Claim 1 states in a salient portion (emphasis added):

"...encapsulating the received data packet in a **flow header** including **at least two of a** flow message type field, a flow option field, a source port identity field, a destination identity field and a session identity field in the header of the received data packet;..."

To show that this claim limitation is anticipated, the Office Action, on page 3, lines 2-9, alleges that *Brendel* col. 10, lines 5-13 “**implies**” that a client request is encapsulated and forwarded to the assigned server by the load balancer. *Brendel* col. 10, lines 5-13 states:

“When no matching SSL session ID is found in the table, step 83, then the connection is for a new SSL session. The server is assigned using the default load-balancing method, whether random, least-used, or some other assignment method, step 87. The server-generated SSL session ID, which is then returned from the server in the same connection as part of the response to the encrypted client request, is stored in a new or empty entry in the table, along with the server the connection was assigned to, step 89.”

Applicants note that this passage merely describes transmission of an SSL session ID from a server to a load balancer for storage in a table entry. Applicants submits that the above passage does **not** inherently or expressly disclose **either** encapsulating a received data packet generally **or** encapsulating a received data packet as particularly described in rejected claim 1- i.e. in a flow header including at least two of a flow message type field, a flow option field, a source port identity field, a destination identity field and a session identity field in the header of the received data packet. More specifically, the above passage in *Brendel* does not inherently require that transmission of an SSL session ID from a server to a load balancer for storage in a table entry comprise the particular encapsulation of a data packet in the flow header set forth in the claim. In other words, *Brendel*’s transmission of an SSL session ID from a server to a load balancer for storage in a table entry may be performed in ways which do not comprise the particular encapsulation of a data packet in a flow header which is described in rejected claim 1. Therefore, *Brendel* does not inherently describe **in as complete detail** the identical invention of rejected claim 1.

Each of currently rejected independent claims 9, 13, 21, 25 and 33 contain limitations similar to the above-cited limitations of rejected claim 1. For at least the reasons set forth above, each of independent claims 9, 13, 21, 25 and 33 has at least one limitation which is neither **expressly nor inherently** disclosed in *Brendel*. In depending directly or indirectly from one of independent claims 1, 9, 13, 21, 25 and 33, each of claims 6-7, 10, 18-19, 22, 30-31 and 34 incorporates at least one limitation which is neither expressly nor inherently disclosed in *Brendel*. Accordingly, Applicants request that the 35 U.S.C. §102(e) rejection of claims 1, 6-7, 9-10, 13, 18-19, 21-22, 25, 30-31, 33 and 34 based on *Brendel* be withdrawn.

In the June 15, 2006 response to the preceding Office Action, Applicants argued:

“To anticipate any one of claims 1, 13 and 25, *Brendel* must at least inherently disclose that the flow header and the received data packet it encapsulates is transmitted to the destination if no session identity exists. The Office Action alleges that *Brendel* merely implies this limitation, specifically by returning a server-provided session ID “as part of a response to the encrypted client request” (col. 10, line 11). Applicants submit that nothing contained in *Brendel* inherently discloses transmission of the flow header and the received data packet it encapsulates to the destination if no session identity exists.

Brendel **neither** describes how the server-provided session ID is returned or prompted, **nor** provides any description of “part of a response to the encrypted client request.” In failing to describe this request response, *Brendel* is **silent** as to having a packet/header combination transmitted to the destination when no session identity exists.

Consequently, *Brendel* does not show the identical invention in as complete detail as is

contained in the rejected claim(s), as required under *Richardson v. Suzuki Motor Co.*”

- page 15, lines 4-14

“In failing to describe this request response, *Brendel* is **silent** as to the encapsulation of a data packet by a flow header. Consequently, *Brendel* does not show the identical invention in as complete detail as is contained in the rejected claim(s), as required under *Richardson v. Suzuki Motor Co.* Applicants further submit that the Office Action incorrectly relies on an implied disclosure standard without explaining how transmission of a packet/header combination is inherently or explicitly part of the disclosure in *Brendel*.” - page 16, lines 12-18

The latest Office Action fails to respond to these arguments. First, the *Response to Arguments* section of the latest Office Action not only ignores the above-cited remarks, but includes further improper references to implied disclosure on page 14, lines 5-6 and lines 10-12. Second, the latest Office Action goes on to repeat this improper reliance on an “implied disclosure” standard on page 3, lines 8-9, on page 5, lines 6-7, on page 7, lines 1-2, on page 8, lines 15-16, on page 10, lines 4-5, and on page 11, lines 20-21.

Finality of the Office Action

Applicants respectfully submit that in failing to address the arguments presented in the June 15, 2006 response to the preceding Office Action and in repeating the **improper** use of an “implied disclosure” standard despite the requirements of M.P.E.P. §2131, the rejections of the latest Office

Action are improper, and therefore improperly final. Applicants accordingly request that the finality of the latest Office Action be rescinded. Applicants respectfully requests that any subsequent claim rejections which rely on the “implied disclosure” standard cite some authority in statute or case law which articulate and support such a standard, particularly in light of the apparently contradictory “express or inherent disclosure” standard set forth in M.P.E.P. §2131.

35 U.S.C. §103(a) Rejections

35 U.S.C. §103(a) Rejection over *Brendel* and *Tal*

The Office Action rejects claims 2-3, 14-15, 26 and 27 under 35 U.S.C. §103(a) as being unpatentable over *Brendel* in view of *Tal* et al., US Patent Number 6,625,612 B1 (*Tal*). Although not directly stated, these obviousness rejections seem to follow from the 35 U.S.C. §102(e) rejection over *Brendel* of parent claims 1, 13 and 25. The Office Action further alleges that *Brendel* discloses a search table for finding session IDs using address information, and that *Tal* discloses the deriving of a session ID from address information. For purposes of a complete response, Applicants will treat these rejections as following from the foregoing 35 U.S.C. §102(e) rejections over *Brendel*. For at least the following reasons, Applicants traverse this rejection.

To overcome a §103(a) rejection, Applicants may demonstrate that there is at least one limitation in the rejected claim which is not taught or suggested by any combination of the cited references. Applicants note that independent claims 1, 13 and 25 each include at least one limitation which is neither inherently nor expressly disclosed in *Brendel*, and cite the foregoing discussion of the §102(e) rejections over *Brendel*. In depending directly or indirectly from one

of independent claims 1, 13 and 25, claims 2-3, 14-15, 26 and 27 each incorporate at least one limitation not disclosed by *Brendel*. Neither *Brendel* nor *Tal* are offered in the Office Action as further teaching, nor do they teach or suggest, the limitations otherwise undisclosed by *Brendel* alone as a 35 U.S.C. §102(e) reference. Therefore each of claims 2-3, 14-15, 26 and 27 contains at least one limitation which is not taught by any combination of the cited references.

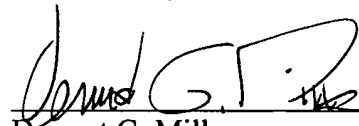
Accordingly, Applicants request that the 35 U.S.C. §103(a) rejection of claims 2-3, 14-15, 26 and 27 based on *Brendel* and *Tal* be withdrawn.

CONCLUSION

For at least the foregoing reasons, Applicants submit that the objections and rejections have been overcome. Therefore, claims 1-3, 6-15, 18-27 and 30-36 are in condition for allowance and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application. Please charge any shortages and credit any overcharges to our Deposit Account No. 02-2666.

Respectfully submitted,
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